


Memorandum

To: Honorable Judy Chu, Ph.D., Chair
Honorable Betty T. Yee, Vice-Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable John Chiang

Date: February 28, 2008

From: Kristine Cazadd
Chief Counsel 

Subject: **Petition for Amendment of Property Tax Rule 140.1**
Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties
March 19, 2008 Board Meeting – Chief Counsel Matters – Item J - Rulemaking

This petition was initially heard at the June 1, 2007 Board meeting, where petitioner, Dianne Spaulding, Executive Director of the Nonprofit Housing Association, requested an amendment to Property Tax Rule¹ 140.1, *Requirements for Managing General Partner of Limited Partnership for Welfare Exemption for Low-Income Housing Properties*, to limit its applicability to limited partnerships in which at least one general partner is a for-profit entity. Petitioner requested an amendment to Rule 140.1 to ease the administrative burden experienced by certain claimants in evidencing compliance with the rule on the Supplemental Clearance Certificate (SCC) claim form.² That petition was denied. However, the Board instructed staff to meet with the petitioner to discuss possible administrative changes that would ease the compliance burden on limited partnerships which have only one general partner and where that sole general partner is a nonprofit acting as the managing general partner.

Thereafter, at the February 1, 2008 Board meeting, staff brought forth a recommendation addressing the petitioner's concerns. In response, the Board directed staff to continue working with petitioner to seek an alternative administrative change that would lessen the burden for limited partnerships attempting to comply with the requirements of Rule 140.1.

Following the Board meeting, staff entered into discussions with petitioner and agreed to certain administrative changes which are set forth below. The petitioner has indicated its agreement with staff's recommendations. Therefore, staff requests the Board's permission to implement these administrative changes.

¹ All Property Tax Rule or Rule references are to title 18 of the California Code of Regulations.

² BOE 277-L1, *Claim for Supplemental Clearance Certificate for Limited Partnership, Low-Income Housing Property-Welfare Exemption*.

This memorandum sets forth: (1) a brief legal background of Property Tax Rule 140.1; and (2) staff's recommendation for the administration of Rule 140.1 with respect to limited partnerships with a single, nonprofit general partner.

I. Property Tax Rule 140.1 Background

A. Welfare Exemption for Low-Income Housing Properties

California Constitution article XIII, section 4, subdivision (b)³ authorizes the Legislature to exempt property used exclusively for religious, hospital or charitable purposes, which is owned by specified organizations (the "welfare exemption"). Revenue and Taxation Code section 214⁴ is the primary statute implementing the welfare exemption. As relevant herein, subdivision (g) of section 214 extends the welfare exemption to property owned and operated by a limited partnership in which the managing general partner is a qualifying nonprofit corporation or limited liability company, and the property is used exclusively for low-income housing.⁵

The statute has been interpreted and implemented by Property Tax Rules 140, 140.1, and 140.2, effective July 23, 2006, with Rule 140.1 defining the term "managing general partner" of a limited partnership.

B. Property Tax Rule 140.1

Rule 140.1 defines "managing general partner" and implements and specifies the requirements that a managing general partner must meet in order for the low-income housing property, owned and operated by the limited partnership, to qualify for the welfare exemption. Rule 140.1, subdivision (a)(6) states that a "managing general partner" means a general partner that:

(A) is a nonprofit corporation, or an eligible limited liability company meeting the requirements of Revenue and Taxation Code section 214, designated in the limited partnership agreement as the 'managing general partner' of the limited partnership;

(B) is authorized to receive a partnership management fee, or similar form of compensation, payable in the amount and the manner set forth in the limited partnership agreement or other agreement executed by all of the general partners for performing its duties;

(C) has 'material participation,' as defined in subdivision (a)(7) below, in the control, management, and direction of the limited partnership's business; and

³ See also Cal. Const. art. XIII, § 5.

⁴ All statutory references are to the Revenue and Taxation Code unless otherwise specified.

⁵ In order to qualify for the welfare exemption for low-income housing, in addition to the requirements of section 214, subdivision (g), the managing general partner must meet the other applicable requirements of sections 214, subdivision (a), 214.01, 214.8, 254.5, and 254.6.

(D) the officers and directors of the for-profit general partners, for-profit limited partners, or any of its for-profit affiliates, do not, as individuals or collectively, have a controlling vote or majority interest in the nonprofit managing general partner.

Thus, in order to have material participation in the control, management, and direction of the limited partnership's business as required under Rule 140.1, subdivision (a)(6)(C), the limited partnership or other agreement must expressly provide that the managing general partner:

(A) has a right to vote in all the 'major decisions,' defined in subdivision (a)(8) below;

(B) performs 'substantial management duties,' defined in subdivision (a)(10) below;

(C) directly, or indirectly under its supervision, manages the limited partnership;

(D) annually conducts a physical inspection of the low-income housing property to ensure that the property is being used as low-income housing and meets all of the requirements set forth in Regulation 140; and

(E) annually submits a certification to the county assessor for the county in which the property is located that the low-income housing property meets all of the requirements set forth in Regulation 140.

II. Staff's Recommendation for Applying Rule 140.1 subdivisions (a)(6) and (a)(7)

Staff makes the following recommendations, with which petitioner is in agreement:

A. "Other Agreement"

As stated in Rule 140.1, subdivisions (a)(6)(B) and (a)(7), an "other agreement" may be executed by all general partners of a limited partnership to authorize the receipt of a partnership management fee, and to set forth the managing general partner's role and responsibilities as to the material participation in the control, management, and direction of the limited partnership's business, including the requirement to perform substantial management duties. The "other agreement" is in lieu of amending the limited partnership agreement. Petitioner forwarded to staff a sample "other agreement" which staff found to be acceptable with respect to the Rule 140.1 material participation and substantial management duties requirements, and which may be used by petitioner as a prototype for compliance purposes.

Further, where the limited partnership has only one general partner and that general partner is a nonprofit, staff has informed petitioner that, based on the Legal Department's prior interpretation of section 214, subdivision (g), we can logically conclude that the limited partnership agreement, under Rule 140.1, subdivision (a)(6)(A), does not need to be amended to designate the single, nonprofit general partner as the managing general partner. Finally, since the "other agreement"


is only required to be executed by all the general partners, in a case where there is a sole general partner, the "other agreement" is required to be executed only by that sole nonprofit general partner. Thus, the "other agreement" requirement obviates the need for a limited partnership to amend its limited partnership agreement in order to comply with Rule 140.1, subdivisions (a)(6)(B) and (a)(7).

B. Simplification of Periodic Filing Process

As stated in its January 10, 2008 memorandum, staff recognizes the potential compliance burden placed on organizations by the SCC claims filing process. Thus, staff recommends that the compliance burden be eased by simplifying the periodic filing process for existing SCC holders. Specifically, staff recommends that only limited partnerships which do not have a SCC and are filing a claim for a SCC for the first time be required to complete the existing SCC claim form. However, once a limited partnership has received a SCC, periodic filings will be required only for limited partnerships selected through a random selection process among the existing SCC holders, thereby ensuring, barring extraordinary circumstances, that a limited partnership would not need to make a periodic filing more than once every four years. Additionally, staff proposes to redesign the periodic filing form so that a SCC holder would only need to certify its compliance with Rule 140.1, instead of specifically identifying the relevant sections of the limited partnership agreement or an "other agreement." Such a change will reduce the time required to complete the periodic filing. In staff's opinion, this simplification of the periodic filing process will ease the compliance burden on limited partnerships without compromising staff's ability to ensure the limited partnership's compliance with Rule 140.1.

If you need more information or have any questions, please contact Acting Assistant Chief Counsel Robert Lambert at (916) 324-6593.

Approved: _____


Ramon J. Hirsig
Executive Director

KEC:RM:pb

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